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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,342	03/01/2004	Peter M. Ryan	RYAN	9049

7590 05/24/2006

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EXAMINER
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PRONE, JASON D

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 05/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/789,342

Applicant(s)

RYAN, PETER M.

Examiner

Jason Prone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 10-14 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1, 10, 11, 12, and 16 are objected to because of the following informalities: In regards to claim 1, the term "at least 20 inches" is not supported in the specification. One example to correct this issue would be to add a phrase, along the lines of, "The length of the blade is at least 20 inches" to the specification.

In regards to claims 10, 11, 12, and 16, the term "is on the order of 1.5 inches" is not supported by the specification. To correct this matter applicant must either, in the claims, replace said term with "is 1.5 inches" or, on page 3 lines 18-19 of the specification, replace the phrase "cross section dimensions are, at the hilt, 1.5 inches along vertical axis 30 from edge 24 to convex side 26 and 1.5 inches along a horizontal axis..." with "cross section dimensions are, at the hilt, on the order of 1.5 inches along vertical axis 30 from edge 24 to convex side 26 and on the order of 1.5 inches along a horizontal axis...". Applicant is reminded that if the specification is amended to correct this issue that the entire paragraph must be replaced not just the single sentence. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard (2,566,112) in view of Holler (2004/0093742) and further in view of The Bud K Catalog.

In regards to claim 1, Barnard discloses the invention including a blade of generally triangular cross section (10, the shape in Figure 3 of the instant application defines the term "generally triangular". The shape in Figure 2 of Barnard is as triangular as Figure 3 of the instant application) having first and second concave sides (24) converging from respective first edges (22) to a common sharp edge (16) and a third side joining the first edges of the first and second sides and providing a heel for the blade (32), the first and second concave sides having deep concavities (24, the term deep is a relative term. For example, the concave sides 24 are deeper than concave side 20), and a hilt including a handle fixed to a first end of the blade (12).

In regards to claims 2 and 3, Barnard discloses a second free end of the blade is pointed (Fig. 1, lower right corner is pointed) and blade is tapered along the length to an acute second end (Fig. 1, blade tapers to the lower right pointed corner).

In regards to claims 4 and 5, Barnard discloses the blade is tapered along its length to a blunted second end (Fig. 1 clearly shows the top edge, starting at reference numeral "10", tapering from the handle and then ends to a blunt edge (right end of Fig. 1)) and the blade is tapered along its length to a knife edge configuration (Fig. 2).

In regards to claim 6, Barnard discloses the third side of the blade is convex (top side of Fig. 2).

However, Barnard fails to disclose a saber at least 20 inches in length and a guard fixed to a first end of the blade.

Holler teaches that it is old and well known for a cutting tool structure that can be incorporated into either a knife or a sword/saber ([0010]) and a guard fixed to a first end of the blade (60). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard with a saber structure and a guard, as taught by Holler, to allow for longer cutting tool with a sharper end having a guard to protect the user.

However, Barnard and Holler fail to disclose the specific blade length of at least 20 inches.

The Bud K Catalog discloses that it is old and well known for sword/saber blades to be at least 20 inches (Line 2 of Cobra Twin description (27 ¼")). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard in view of Holler with a blade with a length of at least 20 inches, as taught by The Bud K Catalog, to allow for a longer cutting surface.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnard in view of Holler further in view of the Bud K catalog as applied to claim 1 above, and further in view of Guerra (Des. 114,396). Barnard and Holler disclose the invention including a handle with a long diameter bisecting an angle defined by the respective first edges of the first and second sides and the common sharp edge (12 in Barnard).

However, Barnard and Holler fail to disclose the handle has an oval-shaped cross section.

Guerra teaches a handle with an oval-shaped cross section (Fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided Barnard in view of Holler further in view of the Bud K catalog with a handle with a oval cross section, as taught by Guerra, to allow for more comfortable grip.

***Allowable Subject Matter***

5. Claims 10, 11, and 16 would be allowable if rewritten to overcome the objections set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. Claims 12-14 would be allowable if rewritten or amended to overcome the objections set forth in this Office action.

***Response to Arguments***

7. Applicant's arguments filed 08 May 2006 have been fully considered but they are not persuasive. In response to applicant's argument that Barnard cannot be used as a weapon, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Barnard is perfectly capable of performing intended actions of a sword. Figure 2 of Barnard clearly shows a topside with a convex shape which is considered the third side. The term deep is a relative term and since no specifics to what the term "deep" is supposed to be are given, any type of concave shaped side could be considered deep. If the concave sides of the

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instant application were compared to an object with even deeper sides, the concave sides of the instant application would then be considered shallow in comparison. Since there are not any disclosed "deep" parameters, the concave sides of Barnard can be considered deep. In Barnard, sides 24 are clearly deeper than sides 20, therefore, the sides are deeper or deep. The Holler reference teaches that it is old and well known for a hand-held cutting structure to be incorporated as a knife or a saber but is silent with respect to how long the saber can be. Bud K teaches that it is old and well known for the saber to be at least 20 inches.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Anderson et al.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

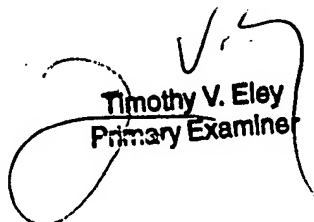
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JP  
May 18, 2006



Timothy V. Eley  
Primary Examiner